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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY ADOLFO MALDONADO,

Defendant and Appellant.

F067479

(Merced Super. Ct.  
No. CRM024229)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Merced County. Ronald W. Hansen, Judge.

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Poochigian, Acting P.J., Peña, J., and Oliver, J.†

† Judge of the Superior Court of Fresno County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

## **INTRODUCTION**

Appellant/defendant Anthony Adolfo Maldonado pleaded guilty to two drug offenses and was sentenced to seven years pursuant to a negotiated disposition. On appeal, his appellate counsel has filed a brief which summarizes the facts with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We will affirm.

## **FACTS**

At 1:00 a.m. on June 13, 2012, Deputy Kao Ly of the Merced County Sheriff's Department responded to a dispatch about fireworks being set off. When Deputy Ly arrived at the scene, he did not see or hear any fireworks, but he came upon a vehicle driving without headlights.

Deputy Ly performed a traffic stop. The driver of the vehicle, who was later identified as defendant, initially stopped the car, and the officer got out of his patrol car. However, defendant started to slowly back up the vehicle and reached down to the floorboard. The officer drew his weapon and repeatedly ordered defendant to stop and show his hands. Defendant failed to comply and continued to back up the vehicle until he reached the street's dead end.

Deputy Ly ordered defendant to get out of the driver's side door. Defendant claimed the door did not work. The deputy ordered him to get out of the passenger side door. Defendant finally complied and got out of the car.

Deputy Ly detained defendant and placed him in handcuffs. Defendant said his name was "Jeffrey Brazil." He did not produce a driver's license. The deputy ran a check and determined Jeffrey Brazil did not have any outstanding warrants, and he did not have a driver's license.

Defendant was arrested for driving without a license. He was found in possession of a small amount of marijuana and an EBT card in someone else's name.

Defendant's car was impounded since he was driving without a license. During the inventory search, the deputies determined the driver's door was functional and could have been opened. The vehicle contained a package of methamphetamine on the driver's side floorboard that weighed 78.4 grams; and a small bundle of methamphetamine between the driver's seat and the center console that weighed 1.5 grams. They also found two digital scales, pay/owe sheets, a police radio scanner, a GPS device, a laptop computer, cell phone SIM cards, a plastic bag of fireworks, and EBT, debit, and medical identification cards in different names.

Defendant was taken to the Merced County Sheriff's Department and booked into custody. The booking deputies immediately recognized defendant and knew his true name. Defendant was a parolee at large and had an outstanding felony arrest warrant for drug offenses.

### **PROCEDURAL HISTORY**

#### **The information**

On or about October 12, 2012, defendant was charged by information with count I, possession of methamphetamine for sale (Health & Saf. Code, § 11378); count II, transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)); and count III, misdemeanor driving without a valid license (Veh. Code, § 12500, subd. (a)).

As to counts I and II, the information alleged defendant had a prior conviction for possession for sale (Health & Saf. Code, § 11378) within the meaning of Health and Safety Code section 11370.2, subdivision (a); two prior strike convictions for gross vehicular manslaughter (Pen. Code, § 192, subd. (c)(1);<sup>1</sup> § 667, subds. (b)–(i); § 1170.12); and two prior prison term enhancements (§ 667.5, subd. (b)).

On March 11, 2013, defendant pleaded no contest to counts I and II with a maximum indicated sentence of seven years eight months, pursuant to a negotiated

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<sup>1</sup> All further statutory citations are to the Penal Code unless otherwise indicated.

disposition. Defendant waived the provisions of section 654 to permit the possible imposition of consecutive sentences. He admitted the prior narcotics and strikes convictions, reserving the request for the court to dismiss the prior strike convictions and consider probation. The court dismissed the remaining charges and enhancements.

### **Sentencing**

On April 11, 2013, defendant filed a request to dismiss his two prior strike convictions for gross vehicular manslaughter<sup>2</sup>, and to be placed on probation for the current drug convictions. Defendant argued the court should dismiss the prior manslaughter convictions because he was only 19 years old when he committed the prior offenses, he was never advised the prior convictions would be strikes when he pleaded guilty to manslaughter, “both strikes arose from the same negligent act,” the “prior strikes” were based on criminal negligence, and it was unclear whether defendant knew “the vehicular manslaughter convictions would be considered strikes” when he entered his pleas in the prior case.

On April 12, 2013, the court conducted the sentencing hearing and denied defendant’s motion to dismiss. The court found the current drug charges showed defendant was a significant drug dealer, he violated probation after the manslaughter convictions, and he continued to commit drug offenses.

The court sentenced defendant to the midterm of two years for count I, doubled to four years as the second strike term, with a consecutive term of three years for the prior

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<sup>2</sup> According to defendant’s motion, he was 19 years old and driving his car with his 18-year-old girlfriend and another teenage friend. He engaged in a high speed automobile race with another driver on a residential road. Defendant lost control of his car and crashed into a telephone pole. His friend was ejected from the car and killed. His girlfriend was seriously injured and died two days later. Defendant pleaded guilty to the charged offenses of two counts of vehicular manslaughter with gross negligence (§ 192, subd. (c)(1)), pursuant to a negotiated disposition. He was placed on formal probation for five years, on the condition that he serve two years in county jail.

drug conviction enhancement, for an aggregate term of seven years. The court imposed a concurrent term for count II.<sup>3</sup>

On or about June 18, 2013, defendant filed a timely notice of appeal, and the superior court granted his request for a certificate of probable cause as to whether he was advised that his prior convictions could be used as strikes to enhance any future sentence.

### **DISCUSSION**

As noted above, defendant's counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating that defendant was advised he could file his own brief with this court. By letter on October 31, 2013, we invited defendant to submit additional briefing. To date, he has not done so.

After independent review of the record, we find that no reasonably arguable factual or legal issues exist.

### **DISPOSITION**

The judgment is affirmed.

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<sup>3</sup> Defendant was apparently sentenced to the second strike term pursuant to the provisions of Proposition 36, since he pleaded no contest to two felonies that were not serious or violent, and the current felonies were not enhanced controlled substance charges (§ 667, subd. (e)(2)(C)).